or the number of stripes diminished in cases punishable in that manner. Anything which, if applied to an individual sentence, would fairly fall within the idea of a remission of a part of the sentence, would not be liable to objection. And any change which should be referable to prison discipline, or penal administration, as its primary object, might also be made to take effect upon past as well as future offences, as changes in the manner or kind of employment of convicts sentenced to hard labor, the system of supervision, the means of restraint or the like. Changes of this sort might operate to increase or mitigate the severity of the punishment of the convict, but would not raise any question under the constitutional provision we are considering."

H. CAMPBELL BLACK.

Williamsport, Pa.

RECENT AMERICAN DECISIONS.

Supreme Judicial Court of Massachusetts.

TRAINER *v.* TRUMBULL.

A., an infant, had a father and mother living, but who did nothing for his support; he himself being in an almshouse, and in a sickly condition. B. was told by the father of A. that A. would at his (the father's) death, be worth $10,000, and was requested by the father to care for A.; and B., after satisfying herself of the truth of the statements made by the father, and relying solely upon the credit of the estate which was to be A.'s at the death of his father, removed A. from the almshouse, and undertook and continued the maintenance of A. for a number of years. *Held*, that the Superior Court was justified in finding, on the facts, that the food, clothing, &c., furnished A., were necessaries for which he should be held responsible, notwithstanding that he, being a pauper and an inmate of an almshouse, was supplied with necessaries there.

Although a guardian is not obliged to provide for the support of his ward when he has no property of the ward available for that purpose, and although he may, under such circumstances, place the ward in an almshouse, this by no means implies that a boy, with an expectation of a fortune of $10,000, should be brought up in an almshouse, if any suitable person will take him, and bring him up properly, on the credit of his expectations; and the support and education furnished to an infant of such expectations, whose means were not presently available, fall clearly within the class of necessaries.

THIS was an action of contract for articles furnished to the defendant, a minor, by the plaintiff. Hearing in the Superior Court, before BRIGHAM, C. J., without a jury, who found the following facts: Defendant was a minor, who was born in January 1868, and was the only child of George B. Trumbull, who died at the Soldier's

Home in Togus, Maine, November 1st 1883, where he had resided from 1876 and previously. Defendant's mother, who was the wife of said George B. Trumbull, was, on October 25th 1875, committed to the house of industry on Deer Island, Boston, and defendant was, on the same day, sent to the almshouse on said Deer Island as a pauper, and there remained until he was removed to the Marcella street home for paupers and neglected boys and girls, in April 1877. On November 17th 1877, the plaintiff removed defendant from said Marcella street home to her home, he then being a pauper, and in a diseased and sickly condition, and there kept him to the time of bringing this action, and during all this period maintained defendant, providing him with food, clothing, lodging, medical attendance, and nursing when sick, and the means of education, at a cost to plaintiff, which, in addition to the reasonable value of her services in making such provision,—which the court ruled, as a matter of law, was a provision for necessaries to defendant,—was not less than the sum stated in the account annexed to the declaration. Plaintiff, on a visit to Togus, and to the Soldiers' Home, in 1876, became acquainted with said George B. Trumbull, who exhibited much distress on account of defendant being an inmate of an asylum for paupers, and his reported sickly condition; stating to her that he, George B. Trumbull, had certain property bequeathed to him by one Susan Bryant, whose adopted son he was, which gave him only a small income, but that at his death the defendant would be worth $10,000. Plaintiff, at said George B. Trumbull's request, having informed herself of the provisions of the will of Susan Bryant, and of the terms of a lease to one Cutler, made by George B. Trumbull, of the property received from said Susan Bryant, and of the value and income of the estate to which it related, undertook and continued the maintenance of defendant as aforesaid, not in any respect relying upon the credit of George B. Trumbull, but relying solely upon the credit of defendant's estate. One Teele, since November 1883, as guardian of the defendant, has had possession and control of real estate in Boston of the value of about $8000, which constitutes all of defendant's property. At the close of plaintiff's case defendant offered no evidence, but requested the court to rule, as matter of law, that upon all the facts in evidence on the part of the plaintiff this action could not be maintained. The court refused to rule as requested, and ruled that upon the facts found the plaintiff was entitled to the sum stated in her account, found for the

plaintiff, assessed damages in the sum of $1112.53, and ordered judgment for plaintiff for that sum; and the defendant alleged exceptions.

Brown & Keyes, for defendant.

J. R. Smith, for plaintiff.

The opinion of the court was delivered by

C. ALLEN, J.—The practical question in this case is whether the food, clothing, &c., furnished to the defendant were necessaries for which he should be held responsible. This question must be determined by the actual state of the case, and not by appearances; that is to say, an infant who is already well provided for in respect to board, clothing, and other articles suitable for his condition, is not to be held responsible if any one supplies to him other board, clothing, &c., although such person did not know that the infant was already well supplied: *Angel* v. *McLellan*, 16 Mass. 31; *Swift* v. *Bennett*, 10 Cush. 436; *Davis* v. *Caldwell*, 12 Id. 512; *Barnes* v. *Toye*, 13 Q. B. Div. 410. So, on the other hand, the mere fact that an infant, as in this case, had a father, mother and guardian, no one of whom did anything towards his care or support, does not prevent his being bound to pay for that which was actually necessary for him when furnished. The question whether or not the infant made an express promise to pay is not important. He is held on a promise implied by law, and not, strictly speaking, on his actual promise. The law implies the promise to pay from the necessity of his situation; just as in the case of a lunatic: 1 Chit. Cont. 197; *Hyman* v. *Cain*, 3 Jones (N. C.) 111; *Richardson* v. *Strong*, 13 Ired. 106; *Gay* v. *Ballou*, 4 Wend. 403; *Epperson* v. *Nugent*, 57 Miss. 45–47. In other words, he is liable to pay only what the necessaries were reasonably worth, and not what he may improvidently have agreed to pay for them. If he has made an express promise to pay, or has given a note in payment, for necessaries, the real value will be inquired into, and he will be held only for that amount: *Earle* v. *Reed*, 10 Metc. 387; *Locke* v. *Smith*, 41 N. H. 346; Metc. Cont. 73, 75.

But it is contended that the board, clothing, &c., furnished to the defendant were not necessaries, because he, "being a pauper, and an inmate of an almshouse, was supplied with necessaries, suitable to his estate and condition, and, under the circumstances, it

would have been the duty of the guardian to place him in the almshouse." It is true that a guardian is not obliged to provide for the support of his ward when he has no property of the ward available for that purpose; and, if he has no other resource, no doubt he may, under such circumstances, place the ward in an almshouse. The authorities cited for the defendant go no further than this: *Spring* v. *Woodworth*, 2 Allen 206. But this by no means implies that a boy with expectation of a fortune of $10,000 should be brought up in an almshouse if any suitable person will take him, and bring him up properly, on the credit of his expectations. On the other hand, it seems to us highly proper for a parent or guardian, under such circumstances, to do what the father did in this case; leaving it for the boy's guardian to see to it that an unreasonable price is not paid. Looking to the advantage of his subsequent life, as well as to his welfare for the time being, his transfer from an almshouse to a suitable person, by whom he would be cared for and educated, would certainly be judicious; and the support and education furnished to an infant of such expectations, whose means were not presently available, fall clearly within the class of necessaries. In Metc. Cont. 70, the authority of Lord MANSFIELD is cited to the point that a sum advanced for taking an infant out of jail is for necessaries: *Earl of Buckinghamshire* v. *Drury*, 2 Eden 72. See, also, *Clarke* v. *Leslie*, 5 Esp. 28. Giving credit to the infant's expectation of property is the same as giving credit to him.

There was no error in refusing to rule, as matter of law, that upon all the facts in evidence the action could not be maintained. The findings of all matters of fact, of course, are not open to revision. Exceptions overruled.

Since the case of *Bainbridge* v. *Pickering*, 2 W. Black. 1325, it has never, so far as we know, been questioned, but that an infant who lives with and is properly maintained by his parent or guardian, cannot bind himself to a stranger for necessaries: see *Gay* v. *Ballou*, 4 Wend. 403; *Rivers* v. *Gregg*, 5 Rich. Eq. 274; *Kraker* v. *Byrum*, 13 Rich. L. 163; *Kline* v. *L'Amoureux*, 2 Paige 419; *Wailing* v. *Toll*, 9 Johns. 141; *Guthrie* v. *Murphy*, 4 Watts 80; *Angel* v. *McLellan*, 16 Mass. 31; *Pool* v. *Pratt*, 1 Chip. 253; *Beeler* v. *Young*, 1 Bibb 521; *Connolly* v. *Hull*, 3 McCord 6; *Cook* v. *Deaton*, 3 C. & P. 114; *McKanna* v. *Merry*, 61 Ill. 180; *Nicholson* v. *Wilborn*, 13 Ga. 475; *Elrod* v. *Myers*, 2 Head 33; *Perrin* v. *Wilson*, 10 Mo. 451; *Davis* v. *Caldwell*, 12 Cush. 513; *Brooker* v. *Scott*, 11 M. & W. 67; *Burghart* v. *Angerstein*, 6 C. & P. 690; *Steedman* v. *Rose*, 1 C. & M. 422; *Story* v. *Pery*, 4 C & P. 526.

The term *necessaries* is a relative one and includes such things as are useful and suitable to the state and condition in life of the party and not merely such as are required for bare subsistence; and it is a question for the jury whether the

articles furnished are such as a reasonable person of the age and station of the infant would require for real use: *Peters* v. *Fleming*, 6 M. & W. 42. In this case the action was brought to recover a bill for several rings, a watch-chain, pins, &c., amounting to 8*l.* 0*s.* 6*d.*, from the defendant, who was the eldest son of a gentleman of fortune and a member of parliament, and who at the time when the goods were furnished was an undergraduate of the University of Cambridge; and the jury, to whom the question whether the articles were necessary or not, found that they were necessary, and this finding was affirmed by the court.

The articles for which an infant is sought to be charged must not only come within the general class of necessaries in law, but must also be in fact necessary to the infant under the particular circumstances in which he is placed: Reeves's Dom. Rel. *227. Thus, an over-supply of the infant's wants, though the articles may in other respects be regarded as necessaries, gives a demand against him only for so much as was actually needed: *Johnson* v. *Lines*, 6 W. & S. 80.

Where the minor resides with his parents, it will, in the absence of proof to the contrary, be presumed that he is properly supplied with necessaries: *Connolly* v. *Hull*, 3 McCord 6; *Jones* v. *Colvin*, 1 McMull. 14; *Perrin* v. *Wilson*, 10 Mo. 451; *Freeman* v. *Bridger*, 4 Jones L. 4.

Infancy being shown, the burden of proof is with the plaintiff to show that the articles sued for were necessary for the infant: *Thrall* v. *Wright*, 38 Vt. 494; *Nicholson* v. *Wilborn*, 13 Ga. 475; and so whether in the class of necessaries or not: *Thrall* v. *Wright*, *supra*.

Whether the articles are of those classes for which an infant is bound to pay, is matter of law to be judged of by the court; and this question is first to be settled: *Beeler* v. *Young*, 1 Bibb 521; *Glover* v. *Ott*, 1 McCord 572; *Bent* v. *Manning*, 10 Vt. 230; *Tupper* v. *Cadwell*, 12 Met. 563; *Grace* v. *Hale*, 2 Humph. 29; *Stanton* v. *Willson*, 3 Day 57; *Maddox* v. *Miller*, 1 M. & S. 738; *McKanna* v. *Merry*, 61 Ill. 178; *Jordan* v. *Coffield*, 7 W. N. C. 116; *Merriam* v. *Cunningham*, 11 Cush. 40.

But this preliminary question being determined, "if they fall under those general descriptions, then whether they were actually necessary and suitable to the condition and estate of the infant, and of reasonable price, must regularly be left to the jury as matter of fact:" Bing. on Inf. 86, note (1), 87; Story on Sales, § 35; *Beeler* v. *Young*, 1 Bibb 521; *Bent* v. *Manning*, 10 Vt. 230; *Grace* v. *Hale*, 2 Humph. 29; *McKanna* v. *Merry*, 61 Ill. 178; *Jordan* v. *Coffield*, 7 W. N. C. 110; *Merriam* v. *Cunningham*, 11 Cush. 40; *Harrison* v. *Fane*, 1 M. & G. 550; *Stanton* v. *Willson*, 3 3 Day 57; *Maddox* v. *Miller*, 1 M. & S. 738; *Ryder* v. *Wombwell*, L. R., 3 Exch. 90; s. c. 4 Id. 32. The case of *Ryder* v. *Wombwell*, may well be read in this connection. It contains an interesting and instructive discussion of the general question of the nature of necessaries.

There can be no question but that the food, clothing, &c., furnished the defendant in the principal case, come within the legal class of necessaries. It would seem to be equally clear that they were actually necessary to the infant in his then situation. While doubtless an infant will not be liable for necessaries furnished him, merely because his father is poor and unable himself to pay for them (*Hoyt* v. *Casey*, 114 Mass. 397), the credit in this case having been given to the defendant, and the board, clothing, &c., having transferred the defendant from the condition of a pauper to the care of a suitable person, under whose care he had an opportunity to become a useful member of society, to hold that this was not in fact in the highest degree necessary would be contrary to common sense and a disgrace to the law. Upon the whole it seems to us that the decision is beyond question correct.

M. D. Ewell.

Chicago.